HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.10445 of 2001

24-08-2005

Between:

M/s KMR Estates & Builders Private Limited,

10-3-274/1/A/1 Humayun Nagar,

Hyderabad – 500 028 rep. by its Managing Director,

Sri K.Madhava Reddy,.

.. Petitioner

and

The Asst. Commercial Tax Officer,

Integrated Check Post,

Purushothapuram – 532323 and other

.. Respondent

HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.10445 of 2001

ORDER: (Per Hon'ble Sri Justice B.Sudershan Reddy)

The petitioner company challenges the action of first respondent in detaining the excavator and the emergency spares belonging to company at Purushothapuram Integrated Check Post in Srikakulam district. According to the petitioner, the impugned action is arbitrary, illegal and without jurisdiction. The petitioner accordingly prayed for issuance of consequential direction directing the respondents to release the excavator and emergency spares forthwith. The first respondent herein issued notice dated

11-04-2001 to the petitioner stating that during the course of check up of the vehicle at Purushothapuram on 11-04-2001 and upon perusal of the documents made available at that time, it was found that the sale was without any registration number of the consignee and no relevant data was available at the check post. The driver and custodian of the goods vehicles were requested to produce the copies of the

registration certificate of the consignee under the provisions of the Andhra Pradesh General Sales Tax Act and Central Sales Tax Act within three days from the date of receipt of the notice, otherwise the tax and penalty totalling Rs.3,12,816/- will be levied. The petitioner made a representation dated 02-05-2001, *inter alia*, contending that for the purpose of development of land, the petitioner company bought the said excavating machine under hire purchase and while bringing the machine to Andhra Pradesh, the consignment was stopped and detained at Purushothapuram Integrated Check post and the registration certificates under the A.P.G.S.T. Act and C.S.T. Act were sought. The case set up by the petitioner was that they are not doing any works contract, which will attract any provision under the A.P.G.S.T. Act.

Sri Bhaskar Reddy, learned counsel appearing for the petitioner, however, contends that the action of respondents is without any jurisdiction and that under no circumstances, the excavator and emergency spares could have been seized by the first respondent at the check post.

It is not necessary in this case to examine the above contention in detail for the reason that this Court vide interim order dated 22-05-2001 directed the first respondent to release the excavator and emergency spares belonging to the petitioner on condition of petitioner filing an undertaking not to encumber and alienate the items and produce them as and when required by respondents. The petitioner thus got a complete relief even at the stage of admission. In our considered opinion, the interlocutory order dated 22-05-2001 has created an

irreversible situation virtually depriving this Court to adjudicate the matter on merits.

In the circumstances, it would be appropriate to dispose of the writ petition granting liberty to respondents to proceed further in the matter pursuant to the notice issued by them and accordingly pass appropriate orders after providing opportunity of being heard to the petitioner. The petitioner is entitled to raise all its objections, which shall duly be considered by the respondents. The petitioner shall have the benefit of the interim order dated 22-05-2001 until the termination of the proceedings before the first respondent.

The writ petition is accordingly disposed of without any order as to costs.

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B.SUDERSHAN REDDY, J

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RAMESH RANGANATHAN, J

24-08-2005

bsc